

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Apps EXAMINER: Castellano, S.

SERIAL NO.: 09/780,073 GROUP ART UNIT: 3727

FILED: February 9, 2001

FOR: NESTABLE CAN TRAY WITH CONTOURED WALL STRUCTURE

ATTY DOCKET NO.: RPC 0557 PUS

Assistant Commissioner of Patents & Trademarks
Washington, D.C. 20231REQUEST FOR WITHDRAWAL OF FINALITY OF REJECTION

Dear Sir:

The Final Rejection in the above-captioned application mailed December 6, 2002 reopened prosecution in response to Applicant's Appeal Brief, citing new grounds of rejection (over Carroll '213 and a double-patenting rejection). This Final Rejection was purportedly made final because "Applicant's amendment necessitated the new grounds of rejection." However, there was no amendment after the previous final rejection (prior to the appeal) and no amendment that could have "necessitated the new grounds of rejection." Since there was no amendment, and since the office action reopening prosecution contains two new grounds of rejection, this office action should be non-final. Therefore, Applicant requests the Examiner to withdraw the finality of the rejection mailed December 6, 2002.

Applicant has attempted to contact the Examiner. The Examiner returned Applicant's call with a voicemail indicating that the file was unavailable to him at the time. Hopefully, the Examiner can obtain the file now and withdraw the finality of the rejection before the two-month date, which is February 6, 2003.

Respectfully submitted,



Konstantine J. Diamond
Registration No. 39,657
4010 East 26th Street
Los Angeles, California 90023

Dated: January 31, 2003

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this Request for Withdrawal of Finality of Rejection is being sent via facsimile to 703-872-9303
Attention: Examiner Castellano, Group 3727, USPTO, on January 31, 2003.


Konstantine J. Diamond

Konstantine J. Diamond
4010 E. 26th St.
Los Angeles, CA 90023
Phone: 323-262-5145; Fax: 323-269-8506

FAX RECEIVED

JAN 31 2003

GROUP 3700

To: Examiner Castellano

Group: 3727 USPTO

Fax No.: 703-872-9303

Subject: Serial No. 09/780,073

Examiner:

Attached please find the following document(s):

- (1) Request for Withdrawal of Finality of Rejection**

Thank you.